

BANKRUPTCY UPDATE

Expert Analysis

Recent Restructurings In the Pharmaceutical Industry

This issue of the Bankruptcy Update focuses on recent restructurings in the pharmaceutical industry, including Aralez Pharmaceuticals, Egalet Corporation and Synergy Pharmaceuticals.

'Aralez Pharmaceuticals US'

On Aug. 10, 2018, specialty pharmaceutical company Aralez Pharmaceuticals US and its affiliates filed petitions for relief under Chapter 11 of the Bankruptcy Code in the U.S. Bankruptcy Court for the Southern District of New York. *Aralez Pharmaceuticals US* (Bankr. S.D.N.Y. Case No. 18-12426).

The debtors entered Chapter 11 with approximately \$280 million in outstanding secured debt, noting that the company faced financial strain in a highly competitive generic drug industry.

Contemporaneously with the bankruptcy filing, the debtors announced their intention to enter into agreements with two separate stalking horse purchasers to sell their main operating businesses. The debtors proposed to sell their Canadian specialty pharmaceutical business, including the royalties of nonsteroidal anti-inflammatory

EDWARD E. NEIGER is a co-managing partner at ASK LLP, a national law firm focusing on bankruptcy law. He can be reached at eneiger@askllp.com. MARIANNA UDEM, a partner at ASK LLP, assisted in the preparation of this article.

By
**Edward E.
Neiger**



drug Vimovo, to Nuvo Pharmaceuticals in a transaction valued at \$110 million and their Toprol-XL franchise to Deerfield Management in a transaction valued at \$130 million. Deerfield Management would also provide financing in connection with the proposed Nuvo Pharmaceuticals transaction.

To fund operations under Chapter 11, the debtors sought approval of a \$5 million DIP loan to be extended by Deerfield Management. On Aug. 13, 2018, the debtors obtained interim authority to access up to \$1 million in DIP financing proceeds as the court noted that the debtors would need to provide further information regarding their proposed budget and use of funds. The DIP financing facility was ultimately approved on a final basis on Sept. 13, 2018, following a resolution of issues raised by the official committee of unsecured creditors. The compromise included the extension of the committee's time to challenge Deerfield Management's prepetition liens.

In the interim, the debtors moved forward with the proposed sales of their businesses, with Nuvo Pharmaceuticals and Deerfield Management acting as stalking horse bidders. While the debtors and the committee were able to agree on certain modifications to bidding procedures to enable the sale process to proceed, the committee subsequently filed a vehement objection to the sales taking issue with, among other things, Deerfield Management's ability to include a portion of its out-

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standing prepetition obligations in its credit bid. The committee argued that Deerfield Management acted as an equity stakeholder as opposed to a lender by infusing capital in the form of a prepetition secured, convertible note, and that such amounts may be recharacterized as equity and cannot be included in a credit bid. The committee also noted that the second asset sale to Nuvo Pharmaceuticals improperly

contemplates the transfer of avoidance actions with up to \$40 million in potential value.

The debtors and Deerfield Management filed replies contesting the committee's position, arguing, among other things, that the committee cannot establish the elements for recharacterization of the debt under applicable case law. The debtors also argued that the value of the potential avoidance actions implicated in the Nuvo Pharmaceuticals transaction was greatly overstated.

On Dec. 7, 2018, the court entered a stipulated order referring the matter to mediation before retired U.S. Bankruptcy Judge Robert Gerber. The mediation parties include the debtors, the committee, Deerfield Management and AstraZeneca, who interposed a separate objection to the sales.

'Egalet'

On Oct. 31, 2018, pharmaceutical company Egalet and its affiliates filed petitions for relief under Chapter 11 of the Bankruptcy Code in the U.S. Bankruptcy Court for the District of Delaware. *Egalet* (Bankr. D. Del. Case No. 18-12439).

As of the bankruptcy filing, the debtors marketed a nasal spray and oxycodone tablet, having discontinued sales of a morphine tablet prior to the commencement of the Chapter 11 proceeding. The debtors described their mission as focusing on the development, manufacture and commercialization of abuse-deterrent medications. However, the shift in business strategy to combatting the opioid crisis increased the company's debt burden and decreased its revenue stream. To that end, the debtors reported net losses of \$57.9 million in 2015, \$90.6 million in 2016 and \$69.4 million in 2017.

The debtors entered bankruptcy with a restructuring support agreement with holders of 94 percent of their first-lien secured notes and 67 percent of their convertible notes. The debtors owe

an estimated \$80 million on account of first-lien notes administered by US Bank and approximately \$48.6 million in unsecured debt under convertible notes with Bank of New York Mellon acting as trustee.

Under the proposed plan of reorganization, first-lien noteholders are slated to receive \$50 million in new notes, 19.38 percent of new common stock and \$20 million in cash for an estimated 91.4 percent plan recovery, while convertible noteholders would receive 31.62 percent of new common stock for an estimated 54.56 percent plan recovery. General unsecured claims would be reinstated if not otherwise paid in the court of the Chapter 11 cases.

In 'Synergy Pharmaceuticals', the debtors, a biopharmaceutical company specializing in the development and sale of gastrointestinal therapies, commenced their Chapter 11 cases to effectuate a going concern sale of their business.

In addition, the debtors entered into a purchase agreement to acquire four non-narcotic pain products from Iroko Pharmaceuticals. The agreement is contingent upon plan confirmation and payment of certain royalties to Iroko.

On Dec. 3, 2018, the court approved the disclosure statement accompanying the plan of reorganization. A confirmation hearing is tentatively scheduled for Jan. 14, 2019.

'Synergy Pharmaceuticals'

On Dec. 12, 2018, biopharmaceutical company Synergy Pharmaceuticals and its affiliates filed petitions for relief under Chapter 11 of the Bankruptcy Code in the U.S. Bankruptcy Court for the Southern District of New York.

Synergy Pharmaceuticals (Bankr. S.D.N.Y. Case No. 18-14010).

The debtors, a biopharmaceutical company specializing in the development and sale of gastrointestinal therapies, commenced their Chapter 11 cases to effectuate a going concern sale of their business. To that end, the debtors are seeking approval of bidding procedures in connection with the sale of substantially all of their assets with Bausch Health Companies selected as the stalking horse bidder. Bausch Health Companies' stalking horse bid is comprised of \$185 million in cash plus up to \$15 million designated to satisfy severance obligations. The proposed bid procedures include a Feb. 9, 2019 deadline for submission of competing bids, Feb. 12, 2019 auction and Feb. 15, 2019 hearing to approve the sale. A hearing to consider approval of bid procedures is scheduled for Jan. 4, 2018.

To fund the sale process and operations under Chapter 11, the debtors sought approval of a \$155 million DIP financing facility with affiliates of CRG partners acting as agent and lender. The proposed DIP facility includes \$45 million in new money loans and a \$110 million roll-up of the debtors' prepetition obligations. An interim order in connection with the debtors' DIP financing motion was entered on Dec. 13, 2018 and a hearing to consider a second interim order is scheduled for Dec. 21, 2018.